

Appl. No. 10/697,225
Docket No. 9396L
Amdt. dated April 7, 2009
Reply to Office Action mailed on January 7, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 7 - 12 are pending in the present application, and stand rejected. Claims 1-6 and 13-30 have previously been canceled. No additional claims fee is due.

Double Patenting Rejections

Claims 7 and 8 are provisionally rejected under the grounds of obviousness type double patenting over claims 1 and 5 of co-pending application 11/281,791.

The Examiner is reminded that a restriction requirement was imposed in the instant application in a paper mailed on November 1, 2005. In that paper, the Applicants were made to select between patentably distinct inventions of Group I or Group II. Group I was comprised of Claims 1-25 and was drawn to absorbent article having a wetness sensation member. Group II was drawn to an absorbent article “having no wetness sensation member” according to the Office Action. Claims 26-30 were drawn to Group II.

The Applicants elected the invention of Group I. Application 11/281,791 is a division of the instant application with claims 1-5 corresponding to those Group II claims. While the claims have been amended since the original election, the claims of Group II have always used the term “flow control layer” rather than the term “wetness sensation layer” and have not been amended in this respect. Indeed, the use of these differing terms appears to be the basis of the original restriction requirement. The Office Action is now using the supposed fact that these are the “identical member and perform the identical function” to make the instant obviousness type double patenting rejections. This is exactly the type of rejection after a previously imposed restriction requirement prohibited by 35 U.S.C. § 121 and for this reason these rejections should be withdrawn.

Rejection Under 35 USC §103(a) Over Otsubo et al in view of Neading et al. and further in view of Lawrence et al.

Claim 7-9 are rejected under 35 U.S.C. § 103 as unpatentable over Otsubo et al. (US 6,146,367) in view of Neading et al. (US 2001/0049513) and further in view of Lawrence et al. (US 5,910,447). The Office Action takes Otsubo et al. as teaching the invention of Claim 7 except for the visible highlighting comprising an ink-printed pattern having the characteristics claimed. As a threshold matter, it is noted that Otsubo et al. teaches nothing about the visibility of the member the Office Action takes to correspond to the claimed wetness sensation member. While it is true that the sensation member 2 of Otsubo et al. differs physically (i.e. it has undulations) from its surroundings, this is done to enhance its ability to provide a sensation. Any extrapolation that this results in a visible difference is pure speculation. It is true that the instant specification does describe that a visible highlighting can result from physical differences. It should be noted, however, that amended Claim 7 requires an ink printed pattern made up of a plurality of repeating figures as the visible highlighting. More importantly, it does not follow that any physical difference results in the required visible distinctness from surroundings which a visible highlighting creates. The Office Action is, therefore, assuming both the presence of any visible highlighting and using the two secondary references to supposedly suggest the remaining properties of the claimed visible highlighting.

The Office Action then turns to Neading et al. for the teaching of a visible highlighting comprising an ink-printed pattern. Even assuming there is any motivation for this combination – a point which the applicants dispute, there is in fact no teaching of an ink printed pattern by this document. At best, Neading et al. teaches a visible change based wetness indicator with a visible border area not the claimed printed pattern. Nevertheless, in an effort to end prosecution and gain allowance of the subject matter defining aspects of the instant invention, the Applicants have amended Claim 7 to specify that the ink printed pattern is made up of a plurality of repeating figures. Neading et al. certainly does not teach such a feature. In fact, Otsubo et al. is directed to undulations to improve wet feel – a problem unrelated to highlighting. The “printing” of Neading et al. is directed to the functionality of color change for wetness indication – also unrelated to the problem solved by the instant invention. Two completely different functionalities which when combined still do not resulting in the claimed invention fall well short of the

requirements of a *prima facie* case of obviousness. This is because each of the references must be divorced from their operating purposes and even when so divorced and (improperly) combined, still do not meet all of the features of the rejected claim. The further look to the Lawrence et al. document does not help the situation. Lawrence et al. at best discloses that a circle can be drawn around an area where a reagent will change color in a diagnostic article. No attempt is made in the Office Action to explain how this document relates to the problem to be solved by the present invention or how it is otherwise proper to look to this document for further teaching. In any event, the document as described in the Office Action does not supply the missing teachings of a visible highlighting of the wetness sensation member comprising an ink printed pattern made up of a plurality of repeating figures.

The present application describes in some detail the benefits of the combination of the functionality of the wetness sensation member in terms of tactile sensation with its being printed with an ink-printed repeating figure pattern. Such benefits have not been shown to be recognized in any of the cited documents, much less with sufficient specificity to render the invention of Claim 7 obvious under 35 U.S.C. § 103. As such, it is requested that the rejection of Claims 7-9 be withdrawn and the claims be allowed.

Rejection Under 35 USC §103(a) Over Otsubo et al. in view of Neading et al. and Lawrence et al and in further view of Roe et al.

Claims 10-12 depend from Claim 7. The rejections of Claims 10-12 proceed from the same basic rejections of Claims 7-9 as described above. The Office Action provides no further reasoning with respect to Claims 10-12 pertaining to the base rejection. Therefore, Claims 10-12 are patentable for at least all of the same reasons given above with respect to Claims 7-9. The addition of the Roe et al. document in the Office Action is directed only to the supposed obviousness of the details of features of Claims 10-12 and does not address the underlying features of Claims 7-9 found to be missing from the Otsubo / Neading / Lawrence combination. As such, the rejection of these claims should also be withdrawn and the claims should be allowed.

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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By /Matthew P. Fitzpatrick/

Signature

Matthew P. Fitzpatrick
Registration No. 41,751
(513) 983-0878

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